

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

ITV DIRECT, INC.,)
Plaintiff,)
v.)
HEALTHY SOLUTIONS, LLC, ET. AL.,)
Defendants.)

CAPPSEALS, INC.,)
Plaintiff-in-) C. A. No. 04-CV10421-JLT
Intervention) (DEIN, J)
v.)
HEALTHY SOLUTIONS, LLC., D/B/A)
DIRECT BUSINESS CONCEPTS; ITV)
DIRECT, INC. AND DIRECT)
FULFILLMENT, LLC.)
Intervenor-)
Defendants.)

**CAPPSEALS, INC.'S MOTION FOR SANCTIONS UNDER 28 U.S.C. § 1927 AND THE
INHERENT POWERS OF THE COURT**

EXHIBIT A

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF MASSACHUSETTS

CAPPSEALS, INC.,)
Intervenor Plaintiff,)
)
-V-) CIVIL DOCKET NO.
) 04-10421-JLT
ITV DIRECT, INC.,)
Consolidated Defendant.)

JUDGMENT DEBTOR EXAM
BEFORE THE HONORABLE JUDITH G. DEIN
UNITED STATES MAGISTRATE JUDGE

October 17, 2006

Boston, Massachusetts

For the Intervenor Plaintiff:

PETER ANTONELLI, ESQ.
SCOTT A. SILVERMAN, ESQ.
McCarter & English, LLP
225 Franklin street
Boston, MA 02110
617-345-6900

For the Consolidated Defendant:

PETER S. BROOKS, ESQ.
CHRISTOPHER F. ROBERTSON, ESQ.
Seyfarth Shaw, LLP
World Trade Center East
Two Seaport Lane, Suite 300
Boston, MA 02210
617-946-4800

Proceedings recorded by electronic sound recording,
transcript produced by Apex Reporting.

APEX Reporting
(617) 426-3077

COPY

I N D E X

<u>WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Wayne Callahan	6	--	--	--
<u>EXHIBITS: DESCRIPTION</u>	<u>PAGE</u>			
No. 1 ITV Direct Profit and Loss Statement	17			
No. 2 ITV Direct Bank Statements	55			
No. 3 ITV Direct Balance Sheet	56			
No. 4 Docket Sheet and Complaints	56			
No. 5 Docket Sheet	56			
No. 6 Joint Stipulation of Fact	56			
No. 7 Direct Marketing Concepts Report	56			
No. 8 Invoice to Direct Marketing Concepts/ ITV Direct	57			
No. 9 Affidavit with Attachments	57			
No. 10 Home Page of ITV Direct Web Site	60			
No. 11 Document	66			

PROCEEDINGS

THE CLERK: You may be seated.

4 The United States District Court for the District
5 of Massachusetts is now in session on October 17th in the
6 year 2006 in the matter of Cappseals versus ITV Direct,
7 Civil Action No. 2004-10421.

10 MR. SILVERMAN: Scott Silverman and Peter
11 Antonelli on behalf of the creditor, Cappseals,
12 Incorporated, your Honor.

13 MR. BROOKS: Peter Brooks and Chris Robertson,
14 your Honor, for ITV.

15 THE COURT: All right. ITV is ordered to appear
16 at the following time and place to be examined. Have you
17 discussed how you want to proceed?

1 THE COURT: All right. Well, all I know about
2 this is that there's an order to conduct this examination,
3 and I guess everybody's prepared to go forward with that
4 exam. So who's the witness that will be --

5 MR. BROOKS: Wayne Callahan, your Honor.

6 THE COURT: Okay. Take the stand, please.

7 MR. SILVERMAN: Your Honor, would you like any
8 background on the case before the witness testifies?

9 | THE COURT: Sure.

10 Have a seat for a minute.

11 THE CLERK: Please, raise your right hand.

12 | Whereupon,

13 WAYNE CALLAHAN

14 having been first duly sworn, was called as a witness
15 herein, and was examined and testified as follows:

16 THE CLERK: Please, be seated.

17 THE COURT: And for the record, state your full
18 name?

19 THE WITNESS: Wayne Callahan.

20 THE COURT: All right. Let me just have a little
21 background.

22 MR. SILVERMAN: Absolutely, your Honor. I'll be
23 very brief. This is a situation where the debtor, ITV
24 Direct, owes approximately \$1.1 million to Cappseals,
25 Incorporated, for the nonpayment of six shipments of a

1 health supplement called Supreme Greens that were
2 manufactured and delivered by Cappseals.

3 ITV has made no payments to satisfy the judgment
4 that was issued by Judge Tauro back in July of 2005
5 resulting from a debt that was incurred in early 2004. What
6 we intend to do today, your Honor, is to ask the witness
7 questions, and we anticipate that what you're going to hear
8 from ITV is that it has no money; however, that's not really
9 the end of the story, and the reason why we think we needed
10 maybe a little bit additional time beyond what's been
11 allotted is that there's overwhelming evidence that we have
12 that ITV continues to be a significant thriving business
13 generating revenue, advertising supplements --

14 THE COURT: You can proceed with whatever exam you
15 want to do to establish what assets. It's a full exam on
16 the issue of what assets may be available to satisfy this
17 judgment.

18 MR. SILVERMAN: Thank you, your Honor. Do you
19 mind if I pull the podium --

20 THE COURT: However you want.

21 MR. SILVERMAN: -- up just to make it a little
22 easier?

23 (Pause.)

24 MR. SILVERMAN: Good morning, Mr. Callahan. How
25 are you?

1 THE WITNESS: Good morning.

2 MR. SILVERMAN: My name is Scott Silverman, as I
3 just stated, and I represent Cappseals, Incorporated. I'm
4 going to be asking you some questions. If you don't
5 understand any questions, please, let me know, and I'll
6 rephrase them for you.

7 THE COURT: You're going to have to speak up.

8 MR. SILVERMAN: Absolutely, your Honor.

9 DIRECT EXAMINATION

10 BY MR. SILVERMAN:

11 Q Can you provide your name, please, Mr. Callahan?

12 A Wayne Callahan

13 Q And your date of birth?

14 A April 13, '56.

15 Q Your home address, please?

16 A 19 Clark Avenue --

17 Q And what --

18 A -- Chelsea.

19 Q And what is your occupation?

20 A I'm an accountant.

21 Q Are you employed by any company or firm?

22 A I'm self-employed.

23 Q Do you perform services on behalf of the debtor,

24 ITV Direct?

25 A I have.

1 Q Do you currently perform services for ITV Direct?

2 A No.

3 Q Mr. Callahan, do you know how many companies use
4 the trade name ITV Direct?

5 A One.

6 Q What company is that?

7 A ITV Direct, Incorporated.

8 Q And no other company, to your knowledge, uses that
9 trade name or trademark?

10 A Not that I know of, no.

11 Q Are you familiar with ITV's business,
12 Mr. Callahan?

13 A Yes.

14 Q And what is that business?

15 A Essentially, placing media for airing on
16 television and other outlets on behalf of clients.

17 Q Does ITV perform any other services?

18 A Currently, no.

19 Q Has it in the past?

20 A Yes.

21 Q What other services has it performed in the past?

22 A Related -- not buying media, but for consulting
23 for media, planning, things like that, but related to media.

24 Q So, the only activities that ITV has ever
25 performed are purchasing media and consulting work for other

1 companies with regard to the purchase of media; correct?

2 A No, not -- I don't know if that's only the ones
3 that I'm familiar with.

4 Q Are you familiar with whether or not ITV
5 advertises or sells any products?

6 A No, I'm not familiar with that, no.

7 Q So as far as you're concerned, ITV does not sell
8 any products?

9 A ITV Direct does not sell products.

10 Q Do you have any responsibilities at ITV?

11 A Yes. I'm engaged as controller.

12 Q And what is your general role as controller at
13 ITV?

14 A I perform treasury functions and record
15 transactions, interact with vendors.

16 Q Are you involved in preparing financial
17 statements?

18 A Yes.

19 Q How recently have you prepared financial
20 statements for ITV?

21 A The last ones were prepared on, for discovery
22 dated July 2006.

23 Q And those were services you performed for ITV
24 Direct; correct?

25 A Yes.

1 Q Are you involved in preparing tax returns?
2 A I assist the CPA, yes.
3 Q And did you assist in preparing a 2005 tax return
4 for ITV Direct?
5 A Yes.
6 Q When was that done?
7 A Completed?
8 Q Yes.
9 A September 14, 15th.
10 Q Of 2006?
11 A Yes.
12 Q Are you involved in paying bills on behalf of ITV
13 Direct?
14 A No longer.
15 Q Why is that?
16 A ITV Direct doesn't transact currently.
17 Q And it hasn't transacted business in over a year;
18 is that fair to say?
19 A Yes, absolutely.
20 Q So it's your testimony that ITV hasn't paid any
21 significant bills over the last year?
22 A No. ITV Direct has not paid any bills in, in a
23 period of time that I don't know, you know, possibly a year.
24 It's stopped transacting more than a year ago, so -- it may
25 have paid the CPA.

1 Q It may have?

2 A Yes.

3 Q And how would we determine whether or not the
4 CPA's been paid?

5 A Uhm --

6 Q If we took a look at ITV Direct's bank statements,
7 we would see a record of that payment; wouldn't we?

8 A Yes.

9 Q I'll get to that in just a moment. Just to give
10 some additional background, what is the ownership structure
11 of ITV Direct?

12 A I don't know what it is today. I know what it was
13 on the last tax return.

14 Q And what was it on the last tax return?

15 A Listed on the tax return were Donald Barrett and
16 Robert Maihos.

17 Q Do you have --

18 THE COURT: I'm sorry. What was the --

19 THE WITNESS: Robert Maihos on the tax return.

20 BY MR. SILVERMAN:

21 Q Do you have any reason to believe there's been a
22 transfer of any ownership interest between the time of the
23 tax return and now?

24 A No.

25 Q And how many employees does ITV have currently?

1 A None.

2 Q Has ITV ever had employees?

3 A No.

4 Q You stated earlier that ITV purchased media. How
5 did it purchase media without any employees; how did it
6 perform that service?

7 A How did it perform the service of purchasing
8 media?

9 Q Yes.

10 A The media outlets were engaged, media outlets were
11 engaged to run airings of shows for a variety of customers
12 or clients, and payment was made, and -- for the air time.

13 Q By whom were the media outlets engaged?

14 A People's names?

15 Q Yes.

16 A Well, I don't know the names of the people
17 involved who purchased that media. I don't, I don't know
18 the names of the people.

19 Q But presumably there were --

20 A But there were -- yes, yes.

21 Q But those people were not employees of ITV; is
22 that what you're saying?

23 A That's correct. They, they -- or (unintelligible)
24 could have purchased media. I'm not aware of who actually
25 did the work of purchasing the media.

1 THE COURT: I'm sorry. I'm going to need to take
2 a two minute break. I apologize.

3 THE CLERK: All rise.

4 THE COURT: And what I'm going to suggest is that
5 we actually break for 15 minutes, do the 11:30, and then
6 we'll be able to continue this uninterrupted.

7 (Whereupon, a recess was taken.)

8 THE CLERK: The United States District Court for
9 the District of Massachusetts is now in session on
10 October 17th in the year 2006 resuming in the matter of
11 Cappseals versus ITV Direct, Civil Action No. 2004-10421.

12 THE COURT: Continue.

13 BY MR. SILVERMAN:

14 Q Mr. Callahan, you stated earlier that ITV has
15 never had any employees; correct?

16 A That's correct, other than the officers.

17 Q Have those officers been compensated?

18 A I'm going to have to look at the tax returns. I
19 don't recall if they have been off the top of my head.

20 Q But it's fair to say, concerning your testimony
21 earlier, that at least of the last year, there's been no
22 compensated employee at ITV Direct; correct?

23 A That's correct.

24 Q You stated a bit earlier, also, that in July of
25 this year, you prepared financial statements for ITV Direct;

1 correct?

2 A Yes, at the request of, I think, discovery for
3 this matter.

4 Q And you also stated that --

5 A They were dated July. They were, that was the
6 cutoff period they were as of.

7 Q And you also stated that you prepared tax returns
8 for ITV Direct in September of this year; correct?

9 A No. I didn't say that. I said that tax returns
10 were prepared, and I assisted. I did not sign the tax
11 returns for 2005. I assisted the CPA.

12 Q Thank you for the clarification. So, you
13 performed work assisting in the preparation of the tax
14 return that was completed in September 2006; correct?

15 A Yeah.

16 THE COURT: Can you just confirm to me, were you
17 an officer of the company?

18 THE WITNESS: No, I am not an officer of ITV
19 Direct.

20 THE COURT: Were you a controller?

21 THE WITNESS: Yes.

22 THE COURT: Okay.

23 BY MR. SILVERMAN:

24 Q Mr. Callahan, were you paid for the services that
25 you just described?

1 A No, not yet, no.

2 Q Do you expect to be paid?

3 A Yes, I do expect to be paid.

4 Q How do you expect to be paid if ITV Direct is not
5 generating any revenue?

6 A Shareholders may have to put in money --

7 Q So the shareholders --

8 A -- to pay the final liability.

9 Q The shareholders you're describing are Mr. Maihos
10 and Mr. Barrett; correct?

11 A Yes. To my knowledge, those are the two
12 shareholders, yes.

13 Q And you expect those shareholders to pay you
14 directly?

15 A No.

16 Q You expect them to put money into ITV Direct, and
17 that money will be distributed to you?

18 A Possibly, yes. I expect to be paid for my
19 services.

20 Q Do you have an agreement with ITV Direct where
21 you'll be compensated for appearing here today?

22 A No. Actually, I don't.

23 Q Mr. Callahan, are you familiar with ITV Direct's
24 balance sheet?

25 A Yes.

1 Q And you're familiar with the fact that, in this
2 case, a balance sheet dated July 2006 was prepared by ITV
3 Direct; correct?

4 A Yes.

5 Q And if there was an amount that was owed for your
6 services, that should appear as an expense of ITV Direct;
7 correct?

8 A Not on the balance sheet, no.

9 Q Where would that appear?

10 A That would appear on a profit and loss.

11 Q I'd like to put before you --

12 MR. BROOKS: May I see what you're showing him?

13 MR. SILVERMAN: Absolutely. I apologize.

14 MR. BROOKS: Do you have an extra copy?

15 MR. SILVERMAN: Yes.

16 (Pause.)

17 BY MR. SILVERMAN:

18 Q I'd like to put before you a document that is
19 Bates labeled DMC03789; do you see that document,
20 Mr. Callahan?

21 A Um-hum.

22 Q Did you prepare that document, Mr. Callahan?

23 A I believe I did, yes.

24 Q And, in fact, Mr. Callahan, that is the profit and
25 loss statement for ITV Direct for January 1 through July 26,

1 2006; correct?

2 A Yup.

3 Q And that does not indicate any indebtedness to
4 you; does it, Mr. Callahan?

5 A It indicates no expense, no income, no expense.

6 Q And you just --

7 A No activity.

8 Q Correct. But you just stated if there was an
9 amount that was owed to you, it would show up on ITV
10 Direct's profit and loss statement. That's not a question.

11 THE WITNESS: Well, can I clarify?

12 THE COURT: No. You'll have an opportunity --

13 MR. SILVERMAN: You'll have plenty --

14 THE COURT: No.

15 MR. SILVERMAN: -- of opportunity when Mr. Brooks
16 asks you some questions.

17 THE WITNESS: Thank you.

18 BY MR. SILVERMAN:

19 Q Mr. Callahan, can you identify the bank account
20 that ITV maintains?

21 A Beverly National Bank, at 100 Cummings
22 (unintelligible) in Beverly. I don't recall the account
23 number, but if you put it before me, I'm sure I could
24 identify it.

25 MR. SILVERMAN: Your Honor, I'd like to offer into

1 evidence the profit and loss statement that was just
2 introduced.

3 THE COURT: Any objection?

4 MR. BROOKS: No, your Honor.

5 THE COURT: Marked as Exhibit 1.

6 (The document referred to was
7 marked for identification as
8 Exhibit No. 1.)

9 THE COURT: Do you have a copy?

10 MR. SILVERMAN: Your Honor, I only have one copy
11 of this. This is bank statements for ITV Direct, January 1,
12 2006, through July 2006.

13 THE COURT: Okay.

14 (Pause.)

15 MR. BROOKS: If it helps move it along, your
16 Honor, we'll stipulate there's no business activity in this
17 company in 2006.

18 MR. SILVERMAN: I'll accept that stipulation, your
19 Honor, but I think I still need the bank statements.

20 THE COURT: Okay.

21 MR. SILVERMAN: Thank you.

22 BY MR. SILVERMAN:

23 Q Mr. Callahan, I've put before you what's been
24 produced by ITV Direct as the bank statements for this time
25 of year.

1 A Yeah, two accounts.

2 Q Does that refresh your recollection regarding the
3 bank accounts held by ITV Direct?

4 A Yeah, sure. The, the total bank accounts are two.

5 Q Can you give me the account numbers for those?

6 A 2800026480 and 2800021616.

7 Q The first one was 2800026840?

8 A 26480.

9 Q Are there any other accounts that are maintained
10 by ITV Direct?

11 A No.

12 Q Have there ever been other accounts maintained by
13 ITV Direct?

14 A Yes.

15 Q What other accounts?

16 A I don't know the account numbers. In my prior
17 deposition, it was discussed that there was a
18 (unintelligible) issue where they had closed down bank
19 accounts, I believe, in 2003, 2004.

20 Q Since the 2004 time frame, ITV has only maintained
21 these two accounts; is that fair to say?

22 A That is, that is correct, yes. I don't know when
23 the second one began, but yes, these are the only two that
24 have existed for a number of years.

25 Q And the bank statements that are before you are

1 only good through July 2006. Do you know what the current
2 balances of those accounts are?

3 A Yes.

4 Q What are they?

5 A Well, one of them. The 21616 account has
6 approximately \$1,800 in it.

7 Q And do you know what the current balance of the
8 26480 account is?

9 A No. I'd hazard a guess that it's zero though.

10 Q Thank you. Are there any safe deposit boxes
11 maintained by ITV Direct?

12 A No, not to my knowledge.

13 Q Does ITV Direct hold any cash in places other than
14 a banking institution?

15 A No.

16 Q Does ITV own any stocks or bonds?

17 A No.

18 Q Does ITV own or have any interest in any real
19 property?

20 A No.

21 Q Does ITV have any inventory of goods?

22 A No.

23 Q Is it fair to say that ITV has sold all of the
24 Supreme Greens it acquired from Cappseals?

25 A I don't know that, and -- I don't know the answer

1 to that.

2 Q Well, Mr. Callahan, the stipulations in this case
3 indicated that, I believe in August 2004, ITV had 333,000
4 units, excuse me, February 2004, ITV had 333,000 units of
5 Supreme Greens.

6 THE COURT: Of what?

7 MR. SILVERMAN: Supreme Greens, a health
8 supplement.

9 BY MR. SILVERMAN:

10 Q Are you familiar with that fact?

11 A Would you restate that?

12 Q Are you familiar with the fact that, at one point
13 in time, ITV had a significant amount of Supreme Greens
14 inventory?

15 A ITV Direct has never carried an inventory.

16 Q Who has carried the inventory of Supreme Greens?

17 A For that Supreme Greens there, Direct Marketing
18 Concepts for specific reasons.

19 Q Excuse me?

20 A For certain reasons.

21 Q And what are those reasons?

22 A It's lengthy, but I don't know if we want to
23 maybe, maybe you can ask the questions, and we'll get to it,
24 but --

25 Q Please, feel free. What are the reasons why the

1 inventory for Supreme Greens --

2 A It may take a while. Is that okay? But ask
3 specific questions or --

4 Q I'm asking you why the Supreme Greens inventory
5 was held by a company other than ITV Direct?

6 A In the direct response industry, it takes -- to
7 bootstrap a campaign, it's quite a financial investment, so
8 as the, as the media had to get placed and purchased, the
9 inventory was booked on Direct Marketing Concepts because
10 Direct Marketing Concepts was funding all of the television
11 time, and that -- I can elaborate more, but.

12 Q I think you testified before the inventory was
13 maintained by Direct Marketing Concepts because it was a
14 loan between DMC and ITV; correct?

15 A I don't know what you're referring to. You said
16 you think I testified. If it was a loan or if it was for
17 consideration for bootstrapping or funding a television
18 campaign, then it had to be --

19 (Pause.)

20 Q Mr. Callahan, does ITV Direct maintain a coral
21 calcium inventory?

22 A No --

23 Q Strike that. Let me rephrase that.

24 A It does not.

25 Q Does ITV Direct maintain any inventory of the

1 health supplement Almighty Cleanse?

2 A It does not.

3 Q Does ITV Direct maintain any inventory of the
4 health supplement Flex Protex?

5 A It does not.

6 Q Does ITV Direct maintain any inventory of the
7 health supplement Rice and Shine.

8 A No.

9 Q Does ITV Direct maintain any inventory of any of
10 the Natural Cures books that are authored by Kevin Trudell?

11 A No, it does not.

12 Q And does ITV Direct maintain any inventory of the
13 health supplement C-Veg?

14 A It does not. It maintains no inventory.

15 Q And is it also your position that ITV Direct does
16 not advertise or sell any of the products that I just
17 listed?

18 A I'm not, I don't know on marketing. I don't know
19 -- when you say "position," I don't know the marketing. I
20 know that they have not transacted in more than a year, ITV
21 Direct. ITV Direct does not maintain any inventory. As far
22 as marketing stuff, I don't know (unintelligible) I know
23 I'm not recording transactions, and as far as I know, there
24 has been no activity for ITV Direct.

25 Q Does ITV Direct own any vehicles or computers?

1 A It owns no vehicle. You'll have to refresh my
2 memory on the balance sheet for computers. There are some,
3 some of them are on there. Whether, you know, what type of
4 computers -- normal amounts of computers purchased in the
5 first six months of business activity in 2003.

6 Q I've put before you a document labeled BMC03790.
7 Do you recognize that document?

8 A Yes.

9 Q What do you recognize that document to be?

10 A This is a balance sheet dated July 27, 2006, and
11 it -- yeah.

12 Q And does that refresh your recollection as to
13 whether or not ITV Direct owns any computers or other
14 assets?

15 A Yes, it does. Specifically, computer equipment,
16 yeah.

17 Q And according to this balance sheet, ITV Direct
18 has \$32,000, approximately, worth of computer equipment?

19 A Of historical cost, yes.

20 Q Is there any tangible asset sitting in ITV
21 Direct's office that's related to that computer equipment
22 expense?

23 A Well, it's not a computer equipment expense.

24 Q I'm sorry. What did you just call it?

25 A It's an asset. An expense is not on the balance

1 sheet.

2 Q Well, you just called it a historical --

3 A Cost, a historical cost that computer equipment
4 was recorded. You used the word "worth" in your statement.
5 You know, you said "worth" something. I just wanted to say
6 it was recorded. It's not worth that today. It was
7 recorded as a historical cost, but it's not an expense.

8 Q Well, let me rephrase my question. Is there any
9 tangible asset that is sitting in ITV's office that's
10 associated with that historical cost?

11 A It may be more than one asset, but yes, there has
12 to be. Specifically identifiable as to where it is and what
13 it is, is not to be found on this cover -- this one balance
14 sheet, one sheet.

15 Q And do you know what those tangible assets are
16 valued at?

17 A The fair market value today or the historical cost
18 value that I just referenced?

19 Q Fair market value?

20 A No, I don't.

21 Q Mr. Callahan, if I can refer you down to the
22 bottom half of the first page of the balance sheet, there's
23 a line item that reads Accounts Payable; do you see that?

24 A Um-hum.

25 Q There's the number \$5,000 next to it; do you see